IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

OP.No. 18589 of 2000(K)

PETITIONER:

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1. K.M.DANDAPANI, TECHNICIAN (THERMAL-MECHANICAL)
FACT PETROCHEMICA DIVISION, UDYOGAMANDAL P.O.,
ERNAKULAM DISTRICT.

2. D.VENUGOPAL, DO. DO.

3. K.K.VISWANATHAN, DO. DO.

4. C.V.GOPALAKRISHNAN, DO. DO.

BY ADV. SRI.C.P.SUDHAKARA PRASAD (SR.)
SRI.ELVIN PETER P.J.
SRI.P.N.SANTHOSH

RESPONDENTS:

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1. THE FERTILISERS AND CHEMICALS TRAVANCORE LIMITED
UDYOGAMANDAL P.O., ERNAKULAM DISTRICT, REPRESENTED
BY ITS CHAIRMAN AND MANAGING DIRECTOR.

2. THE CHIEF PESONNEL MANAGER, FERTILISERS AND
CHEMICALS TRAVANCORE LIMITED, PETROCHEMICAL DIVISION
UDYOGAMANDAL P.O., ERNAKULAM DIST.

3. A.VEHAS VETHAMONI, TECHINICIAN (MECHANICAL)
FACT PETROCHEMICAL DIVISION,
UDYOGAMANDAL P.O., ERNAKULAMDISTRICT.

4. K.V.JOSPEH, DO. DO.

R1, R2 BY ADV.SRI.A.K.JAYASANKAR
SRI.E.K.NANDAKUMAR
SRI.P.GOPINATHAN
BY ADV. SRI.V.RAJENDRAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NOS.30889/00 & 1447/01 IN OP NO.18589 OF 2000 K

//DISMISSED//

07.06.2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF APPOINTMENT ORDER DATED 25.11.2988 OF THE 1ST PETITIONER.

EXT.P2: DO. OF THE 2ND PETITIONER.

EXT.P3: DO. OF THE 3RD PETITIONER.

EXT.P4: DO. OF THE 4TH PETITIONER.

EXT.P5: TRUE COPY OF ORDER NO.CM(PER)-PD DATED 29TH JUNE, 2000 ALONG WITH THE SENIORITY LIST OF TECHNICIAN (MECHANICAL).

EXT.P6: TRUE COPY OF ORDER NO.DGM(P)-PD.PER-3531 DT.2ND DECEMBER, 1996 ISSUED BY THE 1ST RESPONDENT.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.18589 OF 2000

Dated this the 7th day of June, 2007

JUDGMENT

The petitioners were recruited direct from the open market as Technicians (Mechanical) in the Petrochemical Division (hereinafter referred to as 'PD', for short) of FACT. Respondents 3 and 4 were employed in the Udyogamandal Division (hereinafter referred to as 'UD', for short) of FACT. Following a Promotion Policy Settlement dated 16.11.1995, having regard to the requirement for movement of personnel from UD to PD, respondents 3 and 4 were brought into PD on 10.2.1989, a date after the petitioners had entered into service in PD, by direct recruitment. However, by virtue of the Promotion Policy Settlement, in particular, clause 4.1.1. thereof, while the interse seniority of employees joining PD from UD on selection would be as per the relevant conditions stipulated in the individual appointment orders, they will be deemed to have joined PD on 22.6.1988. By the operation of that provision in

the settlement between the employer FACT and the recognised trade unions, respondents 3 and 4, who came into PD on being appointed as Technicals (Mechanical), got a notional date of joining as 22.6.1988. That date is obviously earlier to the actual entry of the petitioners into the service of FACT. Respondents 3 and 4, therefore, found a place above the petitioners in the seniority list of Technicians (Mechanical).

2. Petitioners are aggrieved by their placing below respondents 3 and 4 in the seniority list of Technicians (Mechanical) and they aspired to be considered for being appointed by promotion to the category of Senior Technician and thereafter, to Process Engineer (Thermal Plant), in preference to respondents 3 and 4. Their contentions are two fold. Firstly, according to them, clause 4.1.1. would apply only to personnel entering PD from UD and it cannot be applied to determine the interse seniority between such personnel and the direct recruits that enter PD from the open market. Secondly, it is urged that in so far as the promotion to the category of Process Engineer (Thermal Plant) is concerned, the notional fixation of the date of

entry into PD cannot be treated as conferring of employees like respondents 3 and 4 to an earlier date of entry into PD service for reckoning their experience in the feeder category for considering them for appointment as Process Engineer (Thermal Plant).

3. In so far as the first contention is concerned, the date of entry into service is a land mark in one's career and that cannot vary from situation to situation. This is because, the date of entry into service is a relevant date for almost all the various matters attendant to the service of an individual. The short question then would be as to whether it is irrational, illegal or unconstitutional for an employer in public sector to provide a notional date of entry in certain peculiar circumstances. This is evident from the materials on record that persons from UD had to be moved into PD having regard to the ASCL project, which later on turned out to be a division, that managerial requirement of the institution was a matter which was deliberated upon by the management and the recognised trade unions of the employees, which resulted in the Promotion Policy Settlement

dated 16.11.1995. Clause 4.1.1. in that policy is not under any direct challenge in this writ petition. Yet, on an entire consideration of the institutional requirement, the fixation of such a notional date of entry into PD service, for those coming in from UD, cannot be found fault with. If that be so, the entry date of respondents 3 and 4 into PD service qua the petitioners who are direct recruits from open market into PD service, cannot be different from the deemed date of entry of respondents 3 and 4 in terms of the aforesaid promotion policy. Hence, the seniority between petitioners and respondents 3 and 4 in the category of Technician (Mechanical) have to be determined by applying the deeming provisions contained in clause 4.1.1. of the Promotion Policy Settlement, thereby fixing the deemed date of entry of respondents 3 and 4 into PD service as 22.6.1988. The first contention of the petitioners, therefore, fails.

4. In so far as the contention regarding 12 years experience for being considered for appointment as Process Engineer (Thermal Plant), in terms of the promotion policy, it needs to be noticed that the experience required is not confined to the

experience in the feeder category, but is “12 years experience in **relevant discipline** in the Company”. Therefore, the experience to be gained to satisfy that condition is the experience that an incumbent gets in the relevant discipline, the relevancy of which depends upon the category to which the promotion is being made and which experience is a matter of assessment by the appointing authority in the selection process. I find no room to interfere with the said clause since the requirement insists that 12 years experience could be in the feeder category. Hence the second contention of the petitioners also fails.

In the result, this writ petition does not succeed. The same is accordingly dismissed. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.18589 OF 2000

JUDGMENT

7th JUNE, 2007.

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